

JOHN MARVIN  
v.  
DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 85-32-A

Decided September 10, 1986

Appeal from a decision of the Deputy Assistant Secretary--Indian Affairs (Operations) concerning ownership of Hoonah War House 7, Lot 5, Block 21, U.S. Resurvey 1735.

Reversed.

1. Indians: Alaska Natives: Generally

The surviving spouse of an original purchaser of a Hoonah War House has an equitable claim for that house superior to the claims of the purchaser's descendants.

APPEARANCES: Ann G. Vance, Esq., Juneau, Alaska, for appellant; Penny Coleman, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee; Mary Alice McKeen, Esq., Juneau, Alaska, for William Lee, Sr.

OPINION BY ADMINISTRATIVE JUDGE LYNN

On April 22, 1985, the Board of Indian Appeals (Board) received a notice of appeal from John Marvin (appellant). Appellant sought review of a February 22, 1985 decision of the Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) concerning ownership of Hoonah War House 7, Lot 5, Block 21, U.S. Resurvey 1735. The house was awarded jointly to appellant and William Lee, Sr. For the reasons discussed below, the Board reverses that decision.

Background

Hoonah is a small Alaska Native fishing village located on the Pacific coast of Alaska approximately 40 miles southwest of Juneau. The village was apparently originally patented pursuant to the Alaska Native Townsite Act, 44 Stat. 629, 48 U.S.C. §§ 355a-355e (1952). Under this act, land for a townsite was surveyed and patented to a townsite trustee, who conveyed restricted interests in designated lots to individuals. Hoonah was surveyed in U.S. Survey 1735, and patent 1055712, dated June 16, 1932, was made to James A. Ramsey, trustee.

On June 18, 1934, Congress passed the Indian Reorganization Act, 25 U.S.C. §§ 461-479 (1982). The record indicates that in 1939 the Hoonah Indian Association (association) was chartered by the Secretary of the Interior (Secretary) under this act.

Much of Hoonah was destroyed by fire in 1944, leaving approximately 100 Indian families homeless. The Federal Public Housing Authority (FPHA) was authorized to construct 80 new houses in the village. The FPHA apparently ignored U.S. Survey 1735 and made an independent survey of the housing project before beginning construction. U.S. Survey 3716, upon which the FPHA based its construction plans, included some of the prior Hoonah townsite, as well as additional lands excluded from the Tongass National Forest.

By 1944, many of the original townsite lots had been conveyed to individuals, but title to some remained with the townsite trustee. The trustee apparently also had title to the additional lands outside the original townsite boundaries. Title to the FPHA housing project, however, was given to the association subject to a mortgage to the United States in the original amount of \$240,000. The mortgage was to be repaid through payments made to the association by individual purchasers of the new houses. Each house was to be sold for \$3,000, with a downpayment of \$450. It was expected that individual townsite lot owners would convey their lots to the association. Upon construction of the houses and payment of \$450, purchasers would receive use permits allowing them to live in the houses. Purchasers would receive deeds when the houses they purchased were paid for. The lot deeded back would not necessarily be the same lot as the one conveyed to the association.

When the houses were constructed in 1944 and 1945, several problem became evident. Some houses were constructed on land that had not been conveyed to the association. Because U.S. Survey 3716 differed from the original Survey 1735, many of the houses were located in areas originally dedicated for public use as streets or alleys, and others were located on more than one of the original townsite lots. In other cases individuals paid for, but did not receive houses, or received houses without payment.

In response to these problems, Congress passed the Act of August 28, 1958, 72 Stat. 974, which transferred the Hoonah project from the FPHA to the Department of the Interior. Among other things, the act granted the Secretary authority to acquire lands by eminent domain so that clear title could be conveyed to proper purchasers of individual housing units. The act also authorized a new survey of the town. U.S. Resurvey 1735 was conducted in 1961.

As one aspect of the transfer process, the Secretary was called upon to determine who should receive the houses. BIA sought applications from interested persons claiming a right to each house and, in many cases, transferred houses to the sole applicant or otherwise determined the person who should receive a house without controversy. Where multiple applications were received, BIA was required to determine who should receive that house. From the record, it appears that BIA took heirship, use and occupancy of the

houses, and certain equitable considerations into account in making those determinations.

BIA received three applications for House 7. The applicants were Albert Anderson, William Lee, Sr., and appellant. In reaching its decision, BIA collected information concerning occupancy of the house and the relationships of the applicants to the original occupants. The following facts appear from the administrative record.

Marion McKinley received a restricted deed to Lot 38, Block 5, U.S. Survey 1735, on May 29, 1933. On October 30, 1944, Marion deeded this lot to the association.

Marion and his wife, Jessie Lee Cropley McKinley Bean, were the original occupants of House 7 under a use permit signed on October 1, 1946, by Marion and the mayor of Hoonah. Although the use permit was signed only by Marion, BIA payment records show the original assignees of House 7 to be Mr. and Mrs. Marion McKinley. Marion and Jessie lived in the house from 1946 until their deaths on March 24, 1947, and February 25, 1968, respectively.

Marion and Jessie had no children together. They did, however, initiate procedures to adopt a baby girl, Isabel McKinley Bean Marvin, shortly after her birth. <sup>1/</sup> Marion died before the June 3, 1948 adoption decree was issued. The adoption decree thus shows only Jessie as the adopting parent. Isabel spent virtually her entire life in House 7, living there from 1946 until 1967, and again from 1968 until her death in 1969.

Isabel married appellant on September 26, 1964. After their marriage, Isabel and appellant lived in House 7 until 1967, and from 1968 until Isabel's death in 1969. Appellant is still living in the house. Isabel and appellant had two children, John Jr. and Nick. Both children have lived in House 7 essentially from birth.

In addition to Isabel, Marion and Jessie each had a son from prior marriages. Marion's son, Albert Anderson (a/k/a Allison McKinley), lived with and was raised by his natural mother. Albert was adopted by his stepfather, and never lived in House 7. <sup>2/</sup>

Jessie's son, William Lee, Sr. (a/k/a William Cropley), lived in House 7 from 1946 until approximately 1954, including a period from 1948 until 1954 when he was married. Some of William's children were born in House 7, and some lived in the house with their grandmother at various times.

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<sup>1/</sup> The record indicates that Marion and Jessie may also have adopted another baby girl, who subsequently drowned. If this adoption did take place, it would have no bearing on this case because the child died without issue.

<sup>2/</sup> Although Albert was found to be Marion's sole heir in a Departmental probate hearing, this determination is suspect. The decision does not address the inheritance rights of Marion's surviving spouse, Jessie, or the effect of Albert's adoption on his right to inherit from his natural father. Because, however, Marion's trust estate consisted only of a small amount of cash, reopening of the estate is not appropriate. See, e.g., Estate of Basil Blackburn, 1 IBIA 261, 79 I.D. 422 (1972).

Jessie remarried in 1949. Jessie's new husband, Roy Bean, moved into House 7 when they were married. Roy continued to live in the house after Jessie's death in 1968, moving out in 1976, when he returned to his original home in Kake, Alaska. From the time of Jessie's death in 1968 until 1976, Roy, Isabel (until her death), appellant, and Isabel's and appellant's children lived in House 7 together. Roy orally stated to BIA employees that he was not interested in applying for House 7 and believed the house should go to appellant and his sons. Roy has since died.

On November 3, 1983, the Juneau Area Director ordered House 7 to be conveyed to William Lee, Sr., and appellant, in undivided one-half interests. On February 22, 1985, this decision was affirmed on appeal by appellee, on the basis that William and appellant were Jessie's heirs. Appellant's appeal to the Board was received on April 22, 1985. Briefs were filed on appeal by appellant, appellee, and William Lee, Sr.

### Discussion and Conclusions

The ultimate question for resolution in this appeal is the identification of the person or persons to whom the Department should convey House 7. This determination must be grounded in P.L. 85-806, which authorizes the conveyance. P.L. 85-806 anticipated the conveyance of Hoonah houses to the purchasers. During the period between the passage of P.L. 85-806 and the determination in this case, the purchasers of House 7 both died.

Because House 7 has never been conveyed to anyone, the question is who other than the original purchasers is entitled to receive the deed to this house. No regulations have been promulgated concerning entitlement determinations because the resolution has been considered as ultimately a question of equity rather than one solely of law. Thus, while the Department has generally attempted to convey houses to heirs of the original purchasers, it is not necessarily the case that strict adherence to statutory schemes of intestate succession will determine the outcome in a particular case. Although Federal statutes dealing with the determination of heirs of Indians dying possessed of property held in Indian trust or restricted status may offer guidance in this decision, they are not controlling. <sup>3/</sup> Instead, as noted above, the administrative record shows that in making decisions the Department has also considered such issues as occupancy of the house, improvements and repairs made, and the wishes of purchasers as to the use of the house.

[1] The Board has carefully considered all of the equities involved in this case, the relationships between the parties, and the use of the house throughout its history. It finds that BIA gave insufficient consideration to the marriage between Jessie and Roy, and Roy's consequent use of

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<sup>3/</sup> The briefs submitted to the Board dealt at great length with the questions of cultural and equitable adoption and the application of 25 U.S.C. § 372a (1982) in Alaska. The Board does not address these issues because they are not necessary to a decision in this matter.

and interest in the house. As the surviving spouse of one of the house's original purchasers, Roy had an equitable claim for the house superior to the claims of Jessie's descendants. Roy's oral statement to BIA officials indicating his desire that the house go to appellant and his sons should also, therefore, have been given more weight. When these factors are considered, it is apparent that appellant's equitable claim to the house outweighs the claim of William Lee, Sr.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 22, 1985, decision of the Deputy Assistant Secretary--Indian Affairs (Operations) is reversed. The Bureau of Indian Affairs is ordered to convey Hoonah War House 7 to John Marvin for himself and his two sons.

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Kathryn A. Lynn  
Administrative Judge

I concur:

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Anita Vogt  
Administrative Judge